FEB 14 1955

HAROLD B. WILLEY, Clerk

IN THE

Supreme Court of the United States

OCTOBER TERM, 1954.

No. 594

AMERICAN CIVIL LIBERTIES UNION, A NEW YORK CORPORATION AND CHARLES LIEBMAN,

Appellants,

vs.

CITY OF CHICAGO, A MUNICIPAL CORPORATION, MARTIN H. KENNELLY, MAYOR, AND TIMOTHY J. O'CONNOR, COMMISSIONER OF POLICE,

Appellees.

APPEAL FROM THE SUPREME COURT OF THE STATE OF ILLINOIS.

STATEMENT AS TO JURISDICTION.

LEON DESPRES,
77 W. Washington Street,
Chicago, Illinois,

SANFORD I. WOLFF,
100 West Monroe Street,
Chicago, Illinois,

HENRY HEINEMAN,
135 South LaSalle Street,
Chicago, Illinois,
Attorneys for Appellants.

Of Counsel:
RICHARD M. ORLIKOFF,
F. RAYMOND MARKS, JR.,
WALTER ROTH.

THE SOUTHERN-REPRINT PRINTING COMPANY, CHICAGO

COPY BOUND CLOSE IN CENTER

TABLE OF CONTENTS.

	PAGE
Opinion Below	21
Grounds on Which Jurisdiction Is Involved	1
Questions Presented	3
Statement of the Case	4
The Federal Question Is Substantial	5
I. The Present Law Relating to Censorship Needs Clarification	5
II. A Licensing System by Which Motion Pictures Are Subjected in Advance to an Administrator's Ruling as to Whether or Not They May Be Exhibited Is Repugnant to the Constitution of the United States	9
III. A Licensing System Which Places in an Administrative Official the Power to Reject Motion Pictures Ignores Both the Constitutional Restriction on Prior Restraint and the Alternative Modes of Protecting Social Values Which Do Not Amount to Prior Restraint	12
IV. The Term "Obscenity" Does Not Provide a Clear Standard by Which Motion Pictures Can Be Censored	15
Conclusion	19
Judgment Below	46
Appendix A (The Opinion Below)	21
Appendix B (Findings and Order of Circuit Court of Cook County)	41
Appendix C (The Ordinance Involved)	42
Appendix D (Order Appealed From)	46

TABLE OF CASES.

American Civil Liberties Union v. City of Chicago, 3 Ill. (2d) 334 (1954)...1, 6, 8, 9, 15, 18, 19, 21-40 (opinion)
Beauharnais v. Illinois, 343 U. S. 250 (1952)..... 14
Besig v. United States, 208 F. (2d) 142 (C. A. 9, 1953). 17
Burstyn v. Wilson, 343 U. S. 495 (1952)...5, 8, 15, 17, 18, 19
Cantwell v. Connecticut, 310 U. S. 296 (1940).....16, 18
Chaplinski v. New Hampshire, 315 U. S. 568 (1941)... 14
Commercial Pictures Corp. v. Board of Regents, 305 N. Y. 336 (1953), 346 U. S. 587 (1954).....6, 19
Gelling v. Texas, 343 U. S. 960 (1952)..... 5
Hague v. C. I. O., 307 U. S. 496 (1939).....17, 18
Hallmark v. Carroll, Court of Common Pleas, Philadelphia, Penn. (1954)..... 17
Hallmark Productions v. Mosley, 190 F. (2d) 904 (C. A. 8, 1951) 17
Holmby v. Vaughn, Circuit Court, Topeka, Kansas (1954) 17
Johnson v. Muelberger, 340 U. S. 581 (1951)..... 2, 9
King Mfg. Co. v. Augusta, 277 U. S. 100 (1927)..... 2
Kunz v. New York, 340 U. S. 290 (1951).....16, 17-18
Largent v. Texas, 318 U. S. 418 (1943).....17, 18
Lovell v. City of Griffin, 303 U. S. 444 (1938).....2, 13, 17
Mutual Film Corporation v. Industrial Comm., 236 U. S. 247 (1915)..... 7
Near v. Minnesota, 283 U. S. 697 (1931).....9-14
Niemotko v. Maryland, 340 U. S. 268 (1951).....17, 18
Parmalee v. United States, 113 F. (2d) 729 (App. D. C., 1940) 17
Patterson v. Colorado, 205 U. S. 454 (1907)..... 13

COPY BOUND CLOSE IN CENTER

People v. Doss, 384 Ill. 400 (1943); 321 U. S. 789 (1944) 14
Pope v. Atlantic Coast Line Railroad Co., 345 U. S. 379 (1953) 2, 9
R. K. O. Radio Pictures, Inc. v. Department of Education (Ohio, 23 Law Week, 2270, 1954)..... 7
Rescue Army v. Municipal Court, 331 U. S. 549 (1947). 2
Schenck v. United States, 249 U. S. 47 (1919)..... 14
Superior Films, Inc. v. Dept. of Education, 346 U. S. 587 (1954) 6, 7
Winters v. New York, 333 U. S. 507 (1948).....2, 15, 18

TABLE OF STATUTES.

Section 1257 (2) of the Judicial Code of the United States (62 Stat. 929, 28 U. S. C. 1257 (2))..... 2, 8
Illinois Revised Statutes, 1953, Chapter 38, Sections 402-44 and 468-472.....13, 14
Municipal Code of the City of Chicago, Chapter 155; Sections 1-7 .....3, 9, 12, 15-16, 19, 42-45 (Text)

IN THE

Supreme Court of the United States

OCTOBER TERM, 1954.

No. .....

AMERICAN CIVIL LIBERTIES UNION, A NEW YORK CORPORATION AND CHARLES LIEBMAN,

Appellants,

vs.

CITY OF CHICAGO, A MUNICIPAL CORPORATION, MARTIN H. KENNELLY, MAYOR, AND TIMOTHY J. O'CONNOR, COMMISSIONER OF POLICE,

Appellees.

APPEAL FROM THE SUPREME COURT OF THE STATE OF ILLINOIS.

STATEMENT AS TO JURISDICTION.

OPINION BELOW.

This is an appeal from an order of the Illinois Supreme Court accompanying an opinion reported at 3 Ill. (2d) 334, 121 N. E. (2d) 513. A copy of the opinion is attached as "Appendix A."

GROUNDS ON WHICH JURISDICTION IS INVOLVED.

By their Complaint for a Declaratory Judgment and Injunction, plaintiffs drew in question the validity of an ordinance of the City of Chicago on the ground that it is

CENTER

repugnant to the First and Fourteenth Amendments to the United States Constitution. The judgment of the Supreme Court of Illinois, of which plaintiffs seek a review on this appeal, upheld the validity of the ordinance.

On May 24, 1954 the Supreme Court of Illinois reversed the decree of the Circuit Court of Cook County, entered on July 21, 1953. The order of the Circuit Court is attached as "Appendix B." On June 18, 1954 a petition for rehearing was filed by plaintiffs, which was denied on September 20, 1954. Notice of appeal was filed in the Supreme Court of Illinois on December 16, 1954.

The jurisdiction of the Supreme Court of the United States to review the judgment by direct appeal is conferred by Section 1257 (2) of the Judicial Code of the United States (62 Stat. 929, 28 U. S. C. 1257(2)) which provides that judgments of the highest court of the state may be reviewed by the Supreme Court of the United States by appeal where the validity of a state statute is constitutionally questioned and the decision is in favor of the validity of the statute. The jurisdictional statute as construed by this court puts such judgments as to ordinances on the same plane as judgments as to state statutes. The following decisions sustain the jurisdiction of this court:

Lovell v. *City of Griffin*, 303 U. S. 444 (1938).

Winters v. *New York*, 333 U. S. 507 (1948).

Pope v. *Atlantic Coast Line Railroad Company*, 345 U. S. 379 (1953).

Johnson v. *Muelberger*, 340 U. S. 581 (1951).

Rescue Army v. *Municipal Court*, 331 U. S. 549 (1947).

King Mfg. Co. v. *Augusta*, 277 U. S. 100 (1927).

COPY BOUND CLOSE IN CENTER

The ordinance involved is Chapter 155 of the Municipal Code of the City of Chicago, Sections 1 through 7, which prohibit the public showing of films without the obtaining of a permit from the Commissioner of Police. The provisions of the ordinance are set forth in "Appendix C."

QUESTIONS PRESENTED.

This is a declaratory judgment action brought by plaintiffs against the City of Chicago, directly challenging the constitutional validity of a licensing system under which no motion picture film may be publicly exhibited unless the Commissioner of Police issues a permit for it. Such a permit may issue only after the Commissioner of Police determines that a film is neither "immoral" nor "obscene". Plaintiffs attack this licensing system on the basis of its unwarranted infringement upon the right of free expression.

Since the relief sought by plaintiffs was a declaration that the Chicago motion picture censorship ordinance is void because it imposes a prior restraint on free expression, and that plaintiffs are entitled to exhibit "The Miracle" without first obtaining a permit, and since the Illinois Supreme Court found, with finality, that the ordinance is valid because the standard "obscene" properly supports a system of prior restraint, plaintiffs seek review of the following question:

> May a city prohibit the public exhibition of every motion picture unless the exhibitor first submits the motion picture to its Commissioner of Police, and unless the Commissioner of Police (or on appeal, the Mayor) first views the picture and determines that in his opinion the motion picture is not immoral or obscene?